

REMARKS

Claims 68-85 are pending in this application. Claims 70-73 have been amended to italicize the genus and species names listed therein. No new matter has been added.

ELECTION/RESTRICTIONS

The Examiner has required an election under 35 U.S.C. § 121 of one of the following inventions:

- I. Claims 68-82, drawn to a method for treating a disease of an animal by administering to the animal product(s) derived from *Burkholderia casidae* characterized by specific 16S rRNA and fatty acid profiles, classified in class 424, subclass 9.1;
- II. Claim 83, drawn to a method for treating a disease of an animal by administering to the animal a cell-free filtrate derived from *Burkholderia casidae*, classified in class 424, subclass 115;
- III. Claim 84, drawn to a method for treating a disease of an animal by administering to the animal cells of *Burkholderia casidae*, classified in class 424, subclass 93.4; and
- IV. Claim 85¹, drawn to a method for treating a disease of an animal by administering to the animal an alcohol extract derived from *Burkholderia casidae*, classified in class 424, subclass 780.

The Examiner contends that the above inventions are distinct, each from the other.

In response, Applicants hereby provisionally elect with traverse Group I, claims 68-82, drawn to a method for treating a disease of an animal by administering to the animal product(s) derived from *Burkholderia casidae* characterized by specific 16S rRNA and fatty acid profiles.

In addition to election of one of the above inventions, the Examiner has required election of one of the following species:

- 1) living whole cells;
- 2) inactivated whole cells;
- 3) a cell-free filtrate; and
- 4) a cell extract.

¹ While the Office Action did not identify a claim which corresponds to this invention, Applicants submit that the subject matter claimed in claim 85 corresponds to this invention.

In order to be fully responsive, Applicants hereby provisionally elect with traverse Species 1, living whole cells.

Applicants traverse the restriction amongst Groups I-IV and Species 1-4. Search and examination of these different Groups and Species would not impose a serious burden on the Examiner. In fact, Applicants believe that the Examiner has already conducted searches and examination of these methods in the parent application No. 09/985,846 (now U.S. Patent No. 6,689,357), of which the instant application is a continuation. Furthermore, all four Groups are classified in class 424.

The M.P.E.P. § 803 (Eighth Edition, August 2001, Revision 5 (revised August 2006)) states:

If the search and examination of all the claims in an application can be made without serious burden, the examiner must examine them on the merits, even though they include claims to independent or distinct inventions.

Applicants respectfully point out that all the Groups and the Species in the present claims should be examined together because the search and examination of all these Groups and Species would not impose a serious burden on the Examiner.

The Examiner further requested that Applicants provide a list of all claims that read on the elected species. The following claims are believed readable on Species 1: 68-77 and 81-82.

Upon allowance of a generic claim, claims drawn to unelected species that include all the limitations of the generic claim should be allowable. See M.P.E.P § 806.04(d).

Applicants reserve the right to petition from the restriction requirement under 37 C.F.R. § 1.144.

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CONCLUSION

Applicants respectfully request that the above amendments and remarks be entered and made of record in the file history of the instant application.

Respectfully submitted,

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Enclosure